



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/826,719 | 04/16/2004 | Thomas P. Bishop | VIEO1220 | 2183 |

34456 7590 03/21/2006

LARSON NEWMAN ABEL POLANSKY & WHITE, LLPL.L.P.
5914 WEST COURTYARD DRIVE
SUITE 200
AUSTIN, TX 78746

| |
|----------|
| EXAMINER |
|----------|

CHO, HONG SOL

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2616

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

32

| | | | |
|------------------------------|-------------------------------|-------------------------------|--|
| Office Action Summary | Application No. 10/826,719 | Applicant(s) BISHOP ET AL. | |
| | Examiner Hong Cho | Art Unit 2662 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-24 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on 2/16/2006. Claims 1-27 are pending in the instant application.

Claim Objections

2. Claim 4 is objected to because of the following informality:

Re claim 4, line 13, "is used to maps" should read - - in used to map - -.

Specification

3. The disclosure is objected to because of the following informality:

The Applicant is required to provide a serial number, a filing date, and the status (if patented or abandoned) of the application cited on page 2 and to remove the attorney docket number on the same page.

Claim Rejections - 35 USC § 112, First paragraph

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-24 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Re claims 1 and 15, the original specification fails to explain how to determine a first communication has a higher priority than a second communication.

Re claims 2 and 16, the original specification fails to explain how a set of packets is used to determine that a given communication is associated with a given application.

Re claims 7 and 21, the original specification fails to explain how to determine a first application specific flow has a higher priority than a second application specific flow.

Re claim 14, the original specification fails to describe an apparatus with two components where the second component is of a different type as compared to the first component.

Claims 3-14 and 17-24 and 27 depend from claims 1 and 15 are similarly rejected.

Claim Rejections - 35 USC § 112, Second paragraph

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 14, it is not clear what is meant by "*the second component is of a different type as compared to the first component*". It cannot be seen how a second component is different from a first one since the second component includes the same type of servers as in the first component.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-10 and 14-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu et al (U.S 6944678), hereinafter referred to as Lu.

Re claims 1 and 15, Lu discloses receiving packets from a client (*application infrastructure*, figure 5, element 60) who is trying to buy an item (*receiving a first communication from the application structure*), receiving packets from a client who is browsing a catalog by the web page (*receiving a second communication from the application structure*, column 8, lines 8-15), and examining the content of packets

(determining the first communication is associated with the first application and the second communication is associated with the second communication, column 8, lines 8-15) and prioritizing the packets based on application-related information (determining the first communication has a higher priority than the second communication, column 8, lines 15-22) .

Re claims 2, 3, 16 and 17, Lu discloses associating the first communication with the first application by examining the first packet and associating the second communication with the second application by examining the second packet (column 10, lines 60-66).

Re claims 4 and 18, Lu discloses classifying packets based on the nature of the application by reference to a content class dictionary *(associating each packet to each application specific flow, column 10, lines 11-18).*

Re claims 5 and 19, Lu discloses different types of traffic with regard to different applications (column 10, lines 63-65).

Re claims 6 and 20, Lu discloses associating communications with applications based on inbound packets (column 10, lines 63-65).

Re claims 7 and 21, Lu discloses examining the content of packets and prioritizes the packets based on application-related information *(determining the first application specific flow has a higher priority than the second application specific flow, column 8, lines 15-22).*

Re claims 8, 10, 22 and 24, Lu discloses applying a set of predefined policies indexed by content class that packets will be dropped *(assigning an application weighted*

random discard value to the second packet based on the second application specific flow and discarding the second packet based on the application weighted random discard value, column 11, line 66 to column 12, line 8).

Re claims 9 and 23, Lu discloses setting an access control list by looking at packet headers (*assigning an application weighted random discard value based on a stream rate, column 10, lines 34-40).*

Re claim 14, Lu discloses a web-based data center with a web server, a database server, and an application server (figure 5, elements 32, 34 and 36).

Claims 13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Falco et al (U.S), hereinafter referred to as Falco.

Re claims 13 and 27, Lu discloses assigning a priority to a packet and redirecting the packet to a predetermined location, but fails to teach assigning latency to the packet based on the application specific flow and forwarding the packet to a local component based on the latency and the priority. Falco discloses defining the priority and waiting-time limit for each data message (column 5, lines 22-25). It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement the teaching of Falco in assigning latency to the packet based on the application specific flow into Lu so that all of the data messages within a same traffic type/class would be serviced at the same level of transmission speed.

Allowable Subject Matter

10. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
11. Claims 25 and 26 are allowed.

Response to Arguments

12. Applicant's arguments with respect to claims 1 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

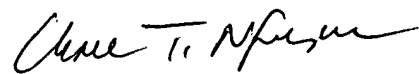
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3088.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

hc
Hong Cho
Patent Examiner
3/16/2006



CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600